

NHGFOA 32nd Annual Conference

The Ethical Administration of Governmental Financial Resources

May 4, 2017

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The Ethical Administration of Governmental Financial Resources

This presentation is intended for informational purposes only, and is not a substitute for seeking professional advice or for reviewing the applicable laws and rules. This presentation represents some positions of the Department on the limited issues discussed herein, based on the law in effect at the time of the presentation and Department interpretation thereof, as well as the opinions and conclusions of its presenter.

For the current status of any tax law, practitioners and taxpayers should consult the source documents (i.e., Revised Statutes Annotated, Rules, Case Law, Session Laws, etc.) for independent verification.

Outline

- What is Ethics?
- Government Finance Officers' Association ("GFOA") Code of Professional Ethics
- Why do Ethics Matter?
 - Trust
 - Respect, Trust, and Confidence of the Public
 - Conflict of Interest
 - Management of Information
 - Respect, Trust, and Confidence of Other Public Officials and Employees
 - Public Scrutiny
 - Supervision
 - Criminal Penalties

What is Ethics?

- Ethics is knowing what you ought to do.
- Ethics is derived from the Greek word *ethos*, meaning custom, habit, character, or disposition.
- Doing the right thing depending on well-established standards of behavior.
 - **The Golden Rule:** Treat others the way you would like to be treated.
 - **Would you do it if your mother was watching?**
- “Relativity applies to physics, not ethics.” – Albert Einstein

GFOA Code of Professional Ethics

- Available at http://nhgfoa.vt-s.net/pages/nhgfoa_about/Policy-CodeofEthics-Reviewed01-09-14.pdf.
- The code sets forth well-established standards of professional conduct for government finance officers – i.e., standards of integrity, responsibility, accountability, and disinterested conduct.
- **Purpose:**
 - To enhance the performance of government finance officers by providing a useful benchmark against which government finance officers can measure their professional integrity; and
 - To encourage a higher standard of professional conduct for government finance officers by supplementing existing laws.
- Statutory requirements may set relatively low standards.
- Even if you meet minimum statutory requirements, you may still be viewed as unethical.

Why Do Ethics Matter?

TRUST

**THE MOST
EXPENSIVE
THING IN THIS
WORLD IS
TRUST. IT CAN
TAKE YEARS TO
EARN AND ONLY
A MATTER OF
SECONDS TO
LOSE.**

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*It takes 20 years
to build a reputation
and five minutes to
ruin it. If you think
about that, you'll
do things differently.*

Warren Buffett

Respect, Trust, and Confidence *of the Public*

- Personal Standards – Government finance officers shall:
 1. Demonstrate and be dedicated to the highest ideals of honor and integrity in all public and personal relationships *to merit the respect, trust, and confidence ... of the public.*
 2. Devote their time, skills, and energies to their office both independently and in cooperation with other professionals.
 3. Abide by approved professional practices and recommended standards.
- There is a need to promote and earn the public's trust.
- Ethical decision-making invites the public's confidence in, and respect for, government.

Respect, Trust, and Confidence *of the Public* (Cont.)

- Responsibility as Public Officials – Government finance officers shall:
 1. Recognize and be accountable for their responsibilities as officials in the public sector.
 2. Be sensitive and responsive to the rights of the public and its changing needs.
 3. Strive to provide the highest quality of performance and counsel.
 4. Exercise prudence and integrity in the management of funds in their custody and in all financial transactions.
 5. Uphold both the letter and the spirit of the constitution, legislation, and regulations governing their actions and report violations of the law to the appropriate authorities.
- “The only correct actions are those that demand no explanation and no apology.” – Red Auerbach

Respect, Trust, and Confidence *of the Public* (Cont.)

- It only takes one charge of impropriety ...
 - To taint your career; and
 - To damage the reputation of the municipality you represent (or, more likely, used to represent).
- Even if you are cleared of wrongdoing, public mistrust of both you and the municipality can linger forever.

Respect, Trust, and Confidence *of the Public* (Cont.)

- The public is significantly concerned with the management of governmental financial resources and may challenge your professional integrity.
- Demonstrate and be dedicated to the highest ideals of honor and integrity.
- The mere appearance of unethical behavior can damage your reputation.

Conflict of Interest

- Conflict of Interest – Government finance officers shall:
 1. Actively avoid the appearance of or the fact of conflicting interests.
 2. Discharge their duties without favor and shall refrain from engaging in any outside matters of financial or personal interest incompatible with the impartial and objective performance of their duties.
 3. Not, directly or indirectly, seek or accept personal gain which would influence, or appear to influence, the conduct of their official duties.
 4. Not use public property or resources for personal or political gain.

Conflict of Interest (Cont.)

- **General Rule:** a conflict of interest will be found when an official has a personal or financial interest in the outcome.
- The NH Supreme Court has explained:

“The reasons for this rule are obvious. A man cannot serve two masters at the same time, and the public interest must not be jeopardized by the acts of a public official who has a personal financial interest which is, or may be, in conflict with the public interest.” Atherton v. Concord, 109 N.H. 164 (1968).

Conflict of Interest (Cont.)

- Conflict of interest laws/policies provides clarity – i.e., behavior necessary to instill trust and faith in government.
- City charters may include conflict of interest provisions. See RSA § 49-C:33, I(c).
- “The legislative body of a town or city may adopt an ordinance defining and regulating conflicts of interest for local officers and employees” RSA § 31:39-a.
- However, not all conflicts of interest are prohibited by law.
- GFOA Code of Professional Ethics supplements existing laws/ordinances.
- **Actively avoid the appearance of or the fact of conflicting interests.**

Conflict of Interest (Cont.)

- Be aware of conflicting interests.
- Even the appearance of conflicting interests undermines the respect, trust, and confidence of the public.
- Remember that you are in a position of public trust.
- In fact and appearance, your actions and interests must be above reproach.

Management of Information

- Professional Integrity/Information – Government finance officers shall:
 1. Demonstrate professional integrity in the issuance and management of information.
 2. Not knowingly sign, subscribe to, or permit the issuance of any statement or report which contains any misstatement or which omits any material fact.
 3. Prepare and present statements and financial information pursuant to applicable law and generally accepted practices and guidelines.
 4. Respect and protect privileged information to which they have access by virtue of their office.
 5. Be sensitive and responsive to inquiries from the public and the media, within the framework of state or local government policy.

Right-to-Know Law

- RSA § 91-A:1 expresses the legislative policy of the Right-to-Know Law:
“Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.”

Right-to-Know Law (Cont.)

- The Right-to-Know Law guarantees “[e]very citizen ... the right to inspect ... and to copy” all public records, with certain limited exceptions.
- **What have the NH courts said?**
 - Do not unreasonably restrict the public’s right of access to governmental proceedings and records.
 - Resolve any questions with a view to best effectuate the statutory objective of facilitating open access to the actions and decisions of public bodies.
 - Broadly construe provisions favoring disclosure and interpret the exemptions restrictively.

Right-to-Know Law (Cont.)

- The general rule is that all meetings “shall be open to the public.” RSA § 91-A:2, II.
- “A ‘meeting’ means the convening of a quorum of the membership of a public body, ... for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power.” RSA § 91-A:2, I.
- “A notice of the time and place of each such meeting ... shall be posted in 2 appropriate places ..., or shall be printed in a newspaper of general circulation in the city or town at least 24 hours ... prior to such meetings.” RSA § 91-A:2, II.

Right-to-Know Law (Cont.)

- **RSA § 91-A:3, I Nonpublic Sessions. –**
 - “(a) Public bodies shall not meet in nonpublic session ... [and] no session at which evidence, information, or testimony in any form is received shall be closed to the public,” with limited exceptions. “No public body may enter nonpublic session, except pursuant to a motion properly made and seconded.”
 - “(b) Any motion to enter nonpublic session shall state on its face the specific exemption ... which is relied upon as foundation for the nonpublic session.”
 - “(c) All discussions held and decisions made during nonpublic session shall be confined to matters set out in the motion.”

Right-to-Know Law (Cont.)

- Governmental records must be made available to the public upon request “except as otherwise prohibited by statute or RSA § 91-A:5.” RSA § 91-A:4, I.
- If not immediately available, must respond within 5 business days from the request in 1 of 3 ways:
 - Make the record available;
 - Deny the request in writing with reasons; or
 - Acknowledge receipt of the request in writing and estimate the time reasonably necessary to respond.

Right-to-Know Law (Cont.)

- **RSA § 91-A:5 Exemptions.** – “The following governmental records are exempted from the provisions of this chapter:
IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information ... and other files whose disclosure would constitute invasion of privacy.”
- RSA 76:16, III(h) provides that municipalities shall treat a taxpayer’s social security or federal tax identification information as “confidential and exempt from a public information request under RSA 91-A.”
- RSA 91-A:3, II(c) provides that public bodies may meet in nonpublic session to consider “any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant,” to avoid adversely affecting the reputation of any person.

Respect, Trust, and Confidence *of Other Public Officials and Employees*

- Personal Standards – Government finance officers shall:
 1. Demonstrate and be dedicated to the highest ideals of honor and integrity in all public and personal relationships *to merit the respect, trust, and confidence of governing officials, other public officials, employees*
 2. Devote their time, skills, and energies to their office both independently and in cooperation with other professionals.

Relationships

- Professional Integrity/Relationships – Government finance officers shall:
 1. Act with honor, integrity, and virtue in all professional relationships.
 2. Exhibit loyalty and trust in the affairs and interests of the government they serve, within the confines of this Code of Ethics.
 3. Not knowingly be a party to or condone any illegal or improper activity.
 4. Respect the rights, responsibilities, and integrity of their colleagues and other public officials with whom they work and associate.
 5. Manage all matters of personnel within the scope of their authority so that fairness and impartiality govern their decisions.
 6. Promote equal employment opportunities, and in doing so, oppose any discrimination, harassment, or other unfair practices.

Why Do Ethics Matter?

PUBLIC SCRUTINY

“If you’re guided by a spirit of transparency, it forces you to operate with a spirit of ethics. Success comes from simplifying complex issues, address problems head on, be truthful and transparent. If you open yourself up to scrutiny, it forces you to a higher standard. I believe you should deliver on your promise. Promise responsibly.” – Rodney Davis



"If necessary, I can be ethical.
Fortunately, it hasn't come to that."

Supervision

- **RSA § 41:29, III Duties of Elected and Appointed Town Treasurers. –**
 - “The town treasurer shall keep in suitable books for the purpose a fair and correct amount of all sums received into and paid from town treasury, and of all notes given by the town, with the particulars thereof.”
 - “At the close of each fiscal year, the treasurer shall make a report to the town ... , giving a particular account of all his or her financial transactions during the year and account balances at year end.”
 - “The treasurer shall furnish to the selectmen statements from the treasurer’s books, and submit the books and vouchers to them and to the town auditors for examination, whenever so requested.”

Supervision (Cont.)

- **RSA § 41:31-c, I Duties (of Town Auditors).**
 - “All municipalities shall annually, or more often as necessary, conduct an audit of the accounts of any officer or agent handling funds of the municipality.”
- **RSA § 41:31-d, I Reports.** – “A complete report of any audit or procedure conducted under RSA 41:31-c shall, upon completion, be made available to the public”

Supervision (Cont.)

- **RSA § 41:35, I Duties of Collector.** –
 - “Every collector of taxes shall keep in suitable books a fair and correct account in detail of the taxes due, collected, and abated, and of all property sold for nonpayment of taxes, which books shall be public records.”
 - “He or she shall submit the tax books and lists to the treasurer and selectmen for inspection and computation when requested”
 - “The collector shall make a written report to the town at the end of each fiscal year”
 - “Upon written request therefor the collector shall provide the selectmen with an itemized list of the uncollected taxes at the end of the fiscal year.”
- **RSA § 41:36 Succession in Office.** – “Whenever the term of office of a collector of taxes shall end, ... [t]he selectmen shall cause an audit of his accounts to be made promptly All books, records and papers of the outgoing collector shall be delivered to the selectmen by every person having possession thereof”

Do the Right Thing

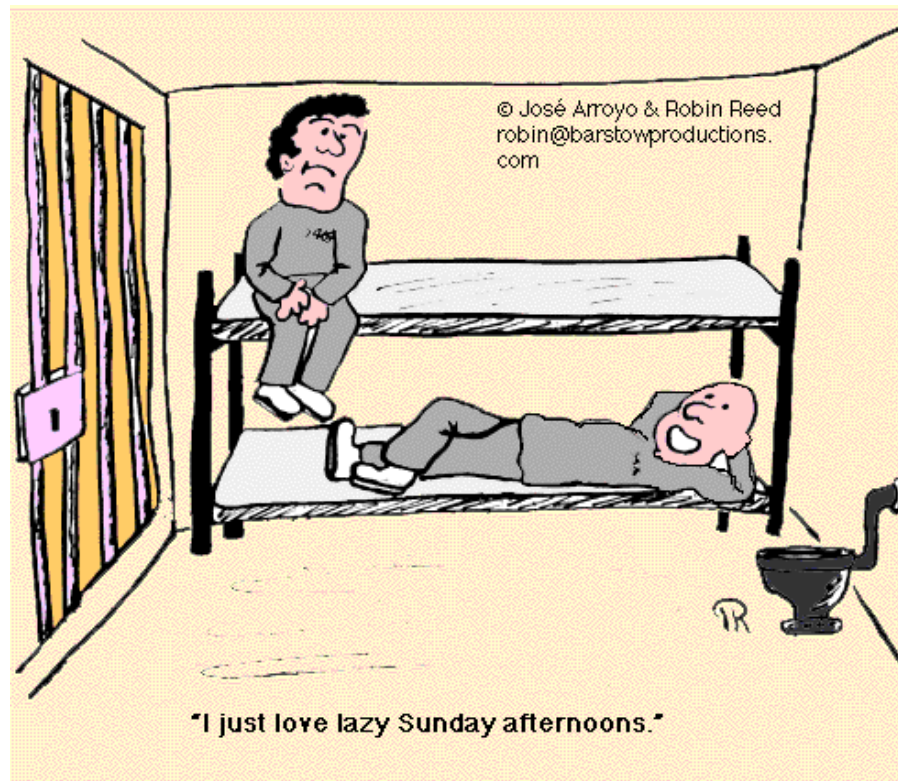
- “Character is doing the right thing when nobody’s looking. There are too many people who think that the only thing that’s right is to get by, and the only thing that’s wrong is to get caught.” – J.C. Watts

Do the Right Thing (Cont.)

- Don't underestimate the probability of unethical behavior coming out.
- Don't overestimate your ability to manage unethical behavior.
- “If it stands the test of public scrutiny, do it ... if it doesn't stand the test of public scrutiny then don't do it.” – Ratan Tata
- “It takes less time to do a thing right, then it does to explain why you did it wrong.” – Henry Wadsworth Longfellow
- “Character is much easier kept than recovered.” – Thomas Paine

Criminal Penalties

- What are the criminal implications of unethical behavior?



Corrupt Practices

- Class B Felonies
 - **RSA § 640:2 Bribery in Official and Political Matters.**
 - **RSA § 640:3 Improper Influence.**
- A person convicted of a class B felony may be sentenced to imprisonment for a maximum of 7 years.

Corrupt Practices (Cont.)

- Misdemeanors
 - **RSA § 640:4 Compensation for Past Action.**
 - **RSA § 640:5 Gifts to Public Servants.**
 - **RSA § 640:6 Compensation for Services.**
 - **RSA § 640:7 Purchase of Public Office.**
- A person convicted of a misdemeanor may be sentenced to imprisonment for a maximum of 1 year.

Falsification in Official Matters

RSA § 641:7 Tampering With Public Records or Information. – “A person is guilty of a misdemeanor if he:

I. Knowingly makes a false entry in or false alteration of any thing belonging to, received, or kept by the government for information or record, or required by law to be kept for information of the government; or

Falsification in Official Matters (Cont.)

RSA § 641:7 Tampering With Public Records or Information (Cont.). –

II. Presents or uses any thing knowing it to be false, and with a purpose that it be taken as a genuine part of information or records referred to in paragraph I; or

III. Purposely and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such thing.”

Abuse of Office

RSA § 643:1 Official Oppression. – “A public servant ... is guilty of a misdemeanor if, with a purpose to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office; or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.”

RSA § 643:2 Misuse of Information. – “A public servant ... is guilty of a misdemeanor if, ... in reliance on information which he has acquired by virtue of his office or from another public servant, he:

- I. Acquires or divests himself of a pecuniary interest ... ; or
- II. Speculates or wages on the basis of such action or information; or
- III. Knowingly aids another to do any of the foregoing.”

Ethics Complaints

Allegations of criminal misconduct by a municipal public official are reported to the Attorney General's Office, Criminal Justice Bureau, Public Integrity and Economic Crime Unit.

Do the Right Thing

